

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,)	
Respondent)	
v.)	Criminal No. 05-15
)	Electronically Filed
REGONALDO DEMELIO,)	
Petitioner)	

ORDER OF COURT OVERRULING PETITIONER'S OBJECTION

On January 8, 2009, this Court granted the Government's Motion for an Extension Of Time Within Which to File its Response to the Defendant's Motion to Vacate Conviction and Sentence (doc. no. 100) until January 19, 2009, with Mr. Demelio's (defendant or petitioner) Reply thereto due on February 27, 2009.

The Court found good cause to grant the government's motion for a limited and reasonable enlargement of time, and found no prejudice would accrue to petitioner by granting said motion and enlarging the time for the government to respond to the Motion to Vacate for two weeks.¹ The government filed its Response to the Motion to Vacate (doc. no. 104) on January 20, 2009, which is timely under the Rules of Civil Procedure. Fed.R.Civ.P. 6(a)(3).²

¹ In its motion, the government stated that the AUSA who handled Mr. Demelio's prosecution had "left the office," that this case was not reassigned to another AUSA, and the government inadvertently failed to notice the Court's Order of November 13, 2008 directing it to file a response to the Motion to Vacate on or before January 5, 2009.

² Except to the extent inconsistent with the Rules Governing Section 2255 Proceedings, the Federal Rules of Civil Procedure apply. Rule 12 of the Rules Governing Section 2255 Proceedings. Fed.R.Civ.P. 6(a)(3) is not inconsistent with the Rules governing Section 2255 Proceedings, and it provides, in relevant part, that in computing "any time period specified in these rules or in any local rule, court order, or statute, (3) Last Day . . . [i]nclude[s] the last day of the period unless it is a Saturday, Sunday, legal holiday When the last day is excluded, the period runs until the end of the next day that is not a Saturday, Sunday, legal holiday, or day when the clerk's office is inaccessible." The Court takes judicial notice that January 19, 2009, was a legal holiday.

Petitioner has filed an objection to the government's motion for enlargement of time and to this Court's grant of said motion, arguing that the government sought this enlargement solely as a delaying tactic to prolong resolution of his Motion to Vacate and that he has been unduly prejudiced by such delay. Furthermore, petitioner requests this Court to enter an immediate default judgment against the government for missing the initial response deadline, arguing that its motion for enlargement of time constituted prosecutorial misconduct.

As this Court stated in *United States v. Clive*, 2008 WL 2073976, at *1 (W.D.Pa. 2008) (default judgments not sanctioned by applicable rules), “[h]abeas corpus proceedings cases are *sui generis*, and to the extent the Federal Rules of Civil Procedure are inconsistent with the Rules Governing Section 2255 proceedings, the latter prevail. *United States v. Bendolph*, 409 F.3d 155, 166 (3d Cir. 2005).” There is no provision in the Rules Governing Section 2255 Proceedings for default judgments against respondents for missing response deadlines, and given the *sui generis* nature of such proceedings and the public interest involved in section 2255 cases, see *Bendolph*, 409 U.S. at 162-63, it would be improper to enter a default judgment in favor of a state or federal prisoner based on a missed deadline, especially here, where petitioner has not been prejudiced by the two week delay in the government's response. Accordingly,

petitioner's Objection (doc. no. 103) to the enlargement of time for the government to file its response and to this Court's Order of January 8, 2009, granting same is HEREBY OVERRULED.

If petitioner needs additional time to file his Reply to the government's response, he may file, and the Court will certainly consider, a motion for enlargement of his time to reply.

SO ORDERED this 21st day of January, 2009.

s/Arthur J. Schwab

Arthur J. Schwab
United States District Judge

cc:

All counsel of record

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